



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VICO CONSTRUCTION CORPORATION
FOR
VICO CONSTRUCTION GRIND YARD
VPDES PERMIT NO. VAR05
STORM WATER REGISTRATION NO. VAR052358
&
VICO CONSTRUCTION CORPORATION SOUTHERN PINES BORROW
PIT
VPDES PERMIT NO. VAG840072**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Vico Construction Corporation, regarding the Vico Grind Yard and the Vico Southern Pines Borrow Pit facilities, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.

2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means the discharge of a pollutant.
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Grind Yard" means the Vico Construction Corporation Grind Yard, located at 4001 South Military Highway, in Chesapeake, Virginia.
9. "GY 2014 Permit" means the VPDES General Permit No. VAR05, associated with the Vico Grind Yard, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expired on June 30, 2019. Vico Construction Corporation applied for registration under the Permit and was issued Registration No. VAR051345 on July 1, 2014.
10. "GY 2019 Permit" means VPDES General Permit No. VAR05, associated with the Vico Grind Yard, which was issued under the State Water Control Law and the Regulation on July 1, 2019, and which expires on June 30, 2024. Vico Construction Corporation applied for registration under the Permit and was issued Registration No. VAR051345 on July 1, 2019.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,

radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
15. "Registration statement" means a registration statement for coverage under a storm water general permit.
16. "Regulation" means the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity, 9 VAC 25-151-10, *et seq.*
17. "Southern Pines Pit" means the Vico Construction Corporation Southern Pines Borrow Pit located at 4000 South Military Highway, in Chesapeake, Virginia.
18. "SP 2019 Permit" means VPDES General Permit for Nonmetallic Mineral Mining, associated with the Vico Southern Pines Borrow Pit, which was issued under the State Water Control Law and the Regulation on July 1, 2019, and which expires on June 30, 2024. Vico Construction Corporation applied for registration under the Permit and was issued Registration No. VAG840072 on July 1, 2019.
19. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
20. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. "SWPPP" means the Stormwater Pollution Prevention Plan.
22. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.

23. “Va. Code” means the Code of Virginia (1950), as amended.
24. “VAC” means the Virginia Administrative Code.
25. “Vico” means Vico Construction Corporation, a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Vico Construction Corporation, is a “person” within the meaning of Va. Code § 62.1-44.3.
26. “VPDES” means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

Vico Grind Yard VAR052358

1. Vico owns and operates the Grind Yard (“Grind Yard”) located at 4001 S. Military Highway, in Chesapeake, Virginia.
2. The GY 2014 Permit allowed, and the GY 2019 Permit allows Vico to discharge stormwater associated with industrial activity from the Facility to the Southern Branch of the Elizabeth River, in strict compliance with the terms and conditions of the currently active permit.
3. The Southern Branch of the Elizabeth River flows to the Chesapeake Bay, Atlantic Ocean and small coastal basin. The Western Branch of the Elizabeth River is listed in DEQ’s 305(b) report as impaired for dissolved oxygen, dioxin, and PCBs in fish tissue.
4. On March 13, 2019, DEQ staff conducted a compliance inspection (“2019 Inspection”) of the Facility. During the inspection DEQ observed the following:
 - a. A brown turbid discharge was observed overtopping stormwater controls at the curb inlets indicated as Outfall 001 and Outfall 002.

GY 2014 Permit Part III.B.4 states control measures shall be implemented for all the areas identified in Part III.B.3 (summary of potential pollutant sources) to prevent or control pollutants in stormwater discharges from the facility

GY 2014 Permit Part II.Q states the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit.

- b. Offsite sediment tracking at the concrete apron facility exits and along the street were observed.

GY 2014 Permit Part III of the permit states that a SWPPP shall be developed and implemented for the facility covered by the permit.

GY 2014 Permit Part III.B.4.b(9) states the permittee shall implement control measures to minimize the generation of dust and off-site tracking of raw, final, or waste materials.

- c. Documentation of routine inspections for leaks and conditions of drums, tanks, and containers was not provided.

GY 2014 Permit Part III.B.4.b.1 states the plan shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers.

- d. Records of Quarterly Visual Monitoring (“QVM”) were requested for 2018 and 2019. No records were provided.

GY 2014 Permit Part I.A.1.a of the permit provides the monitoring requirements for QVM.

- e. Records of Benchmark Monitoring were requested for 2018. No records were provided.

GY 2014 Permit Part I.A.1.b of the permit provides the monitoring requirements for benchmark monitoring.

- f. Records of Chesapeake Bay TMDL Monitoring were requested for 2018. No records were provided.

GY 2014 Permit Part I.B.7.b of the permit provides the requirements for the Chesapeake Bay TMDL monitoring.

- g. The SWPPP stated that the frequency of routine inspections are monthly. Records of routine inspections were requested for 2018, and 2019. No records were provided.

GY 2014 Permit III.B.5 of the permit states that routine facility inspections are to be performed, at a minimum quarterly, with the results of the inspections documented in the SWPPP.

- h. The Comprehensive Site Compliance Evaluation (“CSCE”) recommended six corrective actions. Documentation of corrective actions performed were not provided. The CSCE was not signed.

GY 2014 Permit Part I.A.6.b states that all corrective actions be documented and signed in accordance with Permit Part II.K.

GY 2014 Permit part III.E.3 of the permit states that the CSCE be performed at least once a year and a compliance evaluation report summarizing the scope of the inspection shall be maintained with the SWPPP.

- i. The most recent annual evaluation of all outfalls for the presence of unauthorized discharges was requested. No records provided.

GY 2014 Permit Part III.D.2 states the SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presences of unauthorized discharges.

- j. The SWPPP states that employee training will be performed annually. The most recent employee training record was requested. No records were provided.

GY 2014 Permit Part III.B.4.b.6 states the permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP. The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, control measures operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

- k. The MS4 Notification documentation was requested. No records were provided.

GY 2014 Permit Part I.B.13 of the permit states that if the permittee discharges to surface waters through a MS4, the permittee shall within 30 days of coverage under this general permit, notify the owner of the MS4 in writing of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility’s

VPDES general permit registration number. A copy of such notification shall be provided to the Department.

1. The Chesapeake Bay TMDL requirements were not observed in the SWPPP.

GY 2014 Permit part I.B.7 states the facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility.

- m. The SWPPP and site map state there are four outfalls onsite, however, only two outfalls were registered with the 2014 Permit at the time of the inspection (the 2019 Permit listed four outfalls).

GY 2014 Permit Part III states a SWPPP shall be developed and implemented for the facility covered by the permit.

GY 2014 Permit Part I.B.11 states the permittee may add new or delete existing stormwater outfalls at the facility as necessary and appropriate. The permittee shall update the SWPPP and notify the Department of all outfall changes within 30 days of the change. The permittee shall submit a copy of the updated SWPPP site map with their notification.

- n. No monitoring records were provided upon request. No DMRs had been submitted since the facility was registered for coverage on March 6, 2017. Specifically, the 2017 1st and 2nd semi-annual and the 2018 1st and 2nd semi-annual DMRs were not received.

GY 2014 Permit Part I.A.1.b.1 states benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector or sectors applicable to a facility's discharge.

GY 2014 Permit Part II.C states: 1) the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit; 2) monitoring results shall be reported on a DMR or on forms provided, approved or specified by the Department.

5. On June 13, 2019, DEQ issued NOV No. W2019-06-T-0001 ("2019 NOV"), as well as the inspection report from the March 13, 2019, inspection, to Vico for the violations listed in C(4), above.
6. On June 17, 2019, Vico responded to the 2019 NOV and requested a meeting. On

June 18, 2019, July 10, 2019, and August 15, 2019, Vico provided documentation resolving violations listed in C(4). On July 15, 2019, representatives of Vico met with DEQ staff at the Tidewater Regional Office, and provided further documentation resolving violations listed in C(4).

7. On April 3, 2020, based on a file review ("2020 File Review"), DEQ issued Vico NOV W2020-04-T-0005 ("April 2020 NOV") for failure to submit the 2019 2nd semi-annual TMDL and Benchmark monitoring results by January 10, 2020. Vico replied to the NOV on April 13, 2020, and provided a portion of the required 2019 2nd semi-annual monitoring.
8. On July 9, 2020, DEQ staff conducted a compliance inspection ("2020 Inspection") of the Grind Yard. During the inspection DEQ observed the following:
 - a. A rock lined detention pond had been installed on the northern portion of the site. The detention pond outlet discharges into the MS4 system to Outfall 001. According to Vico staff, the 2020 1st semi-annual benchmark monitoring sample was collected from the detention pond when no discharge was occurring, not from Outfall 001 during a discharge event.

GY 2019 Permit Part II.A states samples and measurements taken as required by this permit shall be representative of the monitored activity.

GY 2019 Permit Part II.A.2.b states a minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in a discharge from the site... providing the interval from the preceding measurable storm event is at least 72 hours.

- b. The curb inlets along the road at Outfall 001, Outfall 002, and Outfall 003 were observed with improperly maintained stormwater controls overtopped by sediment and vegetative growth.

GY 2019 Permit Part II.Q states the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control... which are installed or used by the permittee to achieve compliance with the conditions of the permit.

- c. Sediment was tracked off-site along the curbs leading up to Outfall 001, Outfall 002, and Outfall 003. Control measures to minimize off-site tracking were not observed.

GY 2019 Permit Part III.B.4.b(9) states the permittee shall implement control measures to minimize the generation of dust and off-site tracking of raw, final, or waste materials.

- d. Mulch was overtopping the curbing and spilling into the gutter along the street in the storage area across the street from the main mulch yard. Good housekeeping measures to limit the discharge of wood debris were not observed.

GY 2019 Permit Part IV.C.1 states good housekeeping measures in storage areas, loading and unloading areas, and material handling areas shall be designed to: a) limit the discharge of wood debris; b) minimize the leachate generated from decaying wood materials; c) minimize the generation of dust.

- e. Quarterly visual monitoring records for the 1st and 2nd quarter of 2020 were not provided upon request.

GY 2019 Permit Part I.A.1.a(1) states the permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall, except discharges exempted in Part I.A.3 or Part I.A.4.

- f. The 1st semiannual 2020 benchmark monitoring DMR was not submitted by the July 10, 2020 due date.

GY 2019 Permit Part II.C states the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

- g. The 1st semiannual 2020 Chesapeake bay TMDL monitoring DMR was not submitted by the July 10, 2020, due date.

GY 2019 Permit Part I.B.8.b.3 states facilities that did not complete four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall be subject to completing the monitoring requirements in Part I.B.8.a beginning with the first full monitoring period after receiving permit coverage.

GY 2019 Permit part II.C states the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

- h. The SWPPP was not provided upon request.

GY 2019 Permit Part III states a SWPPP shall be developed and implemented for the facility covered by this permit.

- i. The site map was not provided upon request.

GY 2019 Permit Part III.B.2.b states the SWPPP shall include the following: a) a description of the industrial activities at the facility. b) a site map identifying the following: 1) the boundaries of the property and the size of the property in acres; 2) the location and extent of significant structures and impervious surfaces; 3) locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow using arrows to indicate which direction stormwater will flow; 4) locations of all stormwater control measures, including BMPs; 5) locations of all surface water bodies, including wetlands; 6) locations of potential pollutant sources identified under Part III.B.3; 7) locations where significant spills or leaks identified under Part III.B.3.c have occurred; 8) locations of stormwater outfalls... 9) location and description of all non-stormwater discharges; 10) location of any storage piles containing salt; 11) locations and sources of suspected run-on to the site from an adjacent property if the run-on is suspected of containing significant quantities of pollutants; and 12) locations of all stormwater monitoring points.”

- j. Employee training was not provided upon request.

GY 2019 Permit Part III.B.4.b(6) states the permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training...

- k. Routine inspections for the 1st and 2nd quarter of 2020 were not provided upon request

GY 2019 Permit Part III.B.5 states personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater, areas where spills or leaks have occurred in the past three years, discharge points, and control measures. At least one member of the pollution prevention team shall participate in the routine facility inspections...

1. An annual outfall evaluation for unauthorized discharges was not provided upon request.

GY 2019 Permit Part III.D.2 states the SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include: 1) the date of the evaluation; 2) a description of the evaluation criteria used; 3) a list of the outfalls or on-site drainage points that were directly observed during the evaluation; 4) a description of the results of the evaluation for the presence of unauthorized discharges; and 5) the actions taken to eliminate unauthorized discharges if any were identified.

9. On August 27, 2020, DEQ issued NOV No. W2020-08-T-0001 ("August 2020 NOV"), to Vico for the violations listed in C(8), above. On September 1, 2020, Vico provided documentation that the housekeeping deficiencies had been corrected.
10. On March 23, 2021, based on a file review ("2021 File Review"), DEQ issued Vico NOV W2021-03-T-0004 ("March 2021 NOV") for failure to properly submit the 2020 2nd semi-annual TMDL and Benchmark monitoring results by January 10, 2021. Vico replied to the NOV on March 23, 2021, and DEQ acknowledged receipt of the 2020 2nd semi-annual monitoring, but noted that this and all monitoring events needed to be submitted through eDMR.
11. On August 31, 2021, DEQ staff conducted a compliance inspection ("2021 Inspection") of the Grind Yard. During the inspection DEQ observed the following:
 - a. QVM for 2021 were not provided upon request.

GY 2019 Permit Part I.A.1.a.(1), states the permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall, except discharges exempted in Part I A 3 or Part I A 4.

- b. The 2020 2nd semiannual and 2021 1st semiannual benchmark monitoring DMRs were not received in a timely manner (1st semiannual 2021 provided September 16, 2021, but no lab results).

GY 2019 Permit Part II.C, states the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

- c. The 2020 2nd semiannual and 2021 1st semiannual TMDL monitoring were not received in a timely manner.

GY 2019 Permit Part I.B.8.b.(3), states facilities that did not complete four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall be subject to completing the monitoring requirements in Part I B 8 a beginning with the first full monitoring period after receiving permit coverage.

GY 2019 Permit Part II.C, states the permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

- d. The 2020 2nd semiannual and 1st semiannual DMRs do not include storm event information.

GY 2019 Permit Part I.A.2.c., states for each monitoring event (except snowmelt monitoring), along with the monitoring results, the permittee shall identify the date and duration (in hours) of the storm events sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the duration between the storm event sampled and the end of the previous measurable storm event. For snowmelt monitoring, the permittee shall identify the date of the sampling event."

- e. The SWPPP was not modified following the exceedances reported in the 2021 1st semiannual DMR (provided September 16, 2021).

GY 2019 Permit Part I.A.6., states the benchmark monitoring result exceeds the benchmark concentration value for that parameter, the permittee shall review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Revisions to the SWPPP shall be completed within 60 days after an exceedance is discovered."

- f. The site map was incomplete (provided September 16, 2021, but incomplete).

GY 2019 Permit Part III.B.2.b states the SWPPP shall include the following: a) a description of the industrial activities at the facility. b) a site map identifying the following: 1) the boundaries of the property and the size of the property in acres; 2) the location and extent of significant structures and impervious surfaces; 3) locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow using arrows to indicate which direction stormwater will flow; 4) locations of all stormwater control measures, including BMPs; 5) locations of all surface water bodies, including wetlands; 6) locations of potential pollutant sources identified under Part III.B.3; 7) locations where significant spills or leaks identified under Part

III.B.3.c have occurred; 8) locations of stormwater outfalls... 9) location and description of all non-stormwater discharges; 10) location of any storage piles containing salt; 11) locations and sources of suspected run-on to the site from an adjacent property if the run-on is suspected of containing significant quantities of pollutants; and 12) locations of all stormwater monitoring points.”

- g. Employee training was not provided upon request (provided September 16, 2021, but not sufficient for DEQ).

GY 2019 Permit Part III.B.4.b.(6), states: “The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, control measure operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

- h. The September, August, February, and January 2021 routine inspections were performed during a period when stormwater was discharging but do not include a description of any discharge occurring at the time of the inspection.

GY 2019 Permit Part III.B.5, states: “The results of the inspections shall be documented in the SWPPP and shall include at a minimum: a. The inspection date; b. The names of the inspectors; c. Weather information and a description of any discharges occurring at the time of the inspection; d. Any previously unidentified discharges of pollutants from the site; e. Any control measures needing maintenance or repairs; f. Any failed control measures that need replacement; g. Any incidents of noncompliance observed; and h. Any additional control measures needed to comply with the permit requirements.”

- i. An annual outfall evaluation for unauthorized discharges was not provided upon request.

GY 2019 Permit Part III.D.2 states the SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges. The documentation shall include: 1) the date of the evaluation; 2) a description of the evaluation criteria used; 3) a list of the outfalls or

on-site drainage points that were directly observed during the evaluation; 4) a description of the results of the evaluation for the presence of unauthorized discharges; and 5) the actions taken to eliminate unauthorized discharges if any were identified.

12. On November 23, 2021, DEQ issued NOV No. W2021-11-T-0002 (“November 2021 NOV”), to Vico for the violations listed in C(11), above.
13. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
14. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
16. The Department has issued coverage under no permits or certificates to Vico other than under VPDES Permit No. VAR05 (Reg. No. VAR052358).
17. The Southern Branch of the Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
18. Based on the 2019 Inspection, the 2020 Inspection, the 2021 Inspection, the 2020 File Review, and the 2021 File Review leading to the 2019 NOV, the August 2020 NOV, the March 2021 NOV, and the November 2021 NOV, the Board concludes that Vico has violated GY 2014 Permit Parts III.B.4, II.Q, III, IV.C.2.a, III.B.4.b.1, I.A.1.a, I.A.1.b, I.B.7.b, III.B.5, I.A.6.b, III.E.3, III.D.2, III.B.4.b.6, I.B.13, III.B.4.b.1, I.B.7, I.B.11, I.A.1.b.1, II.C; and GY 2019 Permit Parts II.A, II.A.2.b, II.Q, III.B.4.b(9), IV.C.1, I.A.1.a(1), II.C, I.B.8.b.3, III, III.B.2.b, III.B.4.b(6), III.B.5, III.D.2, I.A.2.c, I.A.6; as noted in paragraphs C(4), (7), (8), (10), and (11) of this Order, above.
19. In order for Vico to complete its return to compliance at the Grind Yard, DEQ staff and representatives of Vico have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

Vico Southern Pines Borrow Pit VAG840072

20. Vico owns and operates the Southern Pines Borrow Pit (“Southern Pines”) located at 4000 S. Military Highway, in Chesapeake, Virginia.

21. The SP 2019 Permit allows Vico to discharge stormwater associated with industrial activity from the Facility to the Southern Branch of the Elizabeth River, in strict compliance with the terms and conditions of the currently active permit.
22. The Southern Branch of the Elizabeth River flows to the Chesapeake Bay, Atlantic Ocean and small coastal basin. The Western Branch of the Elizabeth River is listed in DEQ's 305(b) report as impaired for dissolved oxygen, dioxin, and PCBs in fish tissue.
23. On July 9 2020, DEQ staff conducted a compliance inspection ("2020 Inspection") of Southern Pines. During the inspection DEQ observed the following:

- a. The SWPPP was not provided upon request.

SP 2019 Permit Part II.D states a SWPPP shall be developed and implemented for the facility.

SP 2019 Permit Part II.F.2 states the permittee shall make the SWPPP, routine inspection documentation, or other information available to the department upon request.

- b. The site map was not provided upon request.

SP 2019 Permit Part II.H.2.a states the SWPPP shall identify where industrial materials or activities at the facility are exposed to stormwater. The description shall include: a. Site map.

- c. The January through July 2020 routine facility inspections identified Best Management Practices ("BMPs") that were not operating effectively. Documentation of the dates the BMPs returned to full function and the justification for an extended maintenance or repair schedule was not provided with the SWPPP.

SP 2019 Permit Part II.H.3.b states if site inspections required by part III.H.3.d identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event... Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the dates of regular maintenance, dates of discovery of areas in need of repair or replacement, dates for repairs, dates that the BMPs returned to full function, and the justification for an extended maintenance or repair schedules...

- d. Employee training records were not provided upon request.

SP 2019 Permit part II.H.3.e states employee training shall be conducted at least annually at active mining sites and at those temporarily inactive

sites that are staffed... all employee training shall be documented in the SWPPP.

24. On August 27, 2020, DEQ issued NOV No. W2020-08-T-0002 ("2020 NOV"), as well as the inspection report from the July 9, 2020, inspection, to Vico for the violations listed in C(23), above.
25. On July 13, July 27, August 31, and October 1, 2020, Vico responded to the 2020 NOV and provided documentation resolving violations listed in C(23).
26. On August 31, 2021, DEQ staff conducted a compliance inspection ("2021 Inspection") of Southern Pines. During the inspection DEQ observed the following:
 - a. The facility SWPPP, signed and certified on June 22, 2018, contains permit language and requirements relating to the previous VAG84 General Permit issued July 1, 2014, and expired June 30, 2019. The Southern Pines Pit was covered under the 2014 Permit.

SP 2019 Permit Part II.E.1 states owners of existing facilities that were covered under the 2014 Nonmetallic Mineral Mining General Permit that are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 60 days of the board granting coverage under this permit.

- b. The site map does not indicate the outfall locations.

SP 2019 Permit Part II.H.2.a.(1) states the map must indicate all outfall locations.

- c. Employee training records for 2020 were not provided upon request.

SP 2019 Permit Part II.H.3.e states employee training shall be conducted at least annually at active mining sites and at those temporarily inactive sites that are staffed. Employee training programs shall inform personnel responsible for implementing activities identified in the SWPPP or otherwise responsible for stormwater management at all levels of responsibility of the components and goals of the stormwater pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. All employee training shall be documented in the SWPPP.

27. On November 23, 2021, DEQ issued NOV No. W2021-11-T-0003 ("2021 NOV"), as well as the inspection report from the August 31, 2021, inspection, to Vico for the violations listed in C(26), above.

28. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.
29. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
30. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
31. The Department has issued coverage under no permits or certificates to Vico other than under VPDES Permit No. VAR05 (Reg. No. VAR052358) and VAG84 (Reg. No. VAG840072).
32. The Southern Branch of the Elizabeth River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
33. Based on the 2020 Inspection, the 2021 Inspection, leading to the 2020 NOV, and 2021 NOV, the Board concludes that Vico has violated SP 2019 Permit Parts II.D, II.F.2, II.H.2.a, II.H.3.b, II.H.3.e, II.E.1, II.H.2.a.(1), II.H.3.e; as noted in paragraphs C(23), and (26), of this Order, above.
34. In order for Vico to complete its return to compliance at Southern Pines, DEQ staff and representatives of Vico have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Vico, and Vico agrees to:

1. Pay a civil charge of \$16,425 in settlement of the violations cited in this Order. The civil charge shall be paid in accordance with the following schedule:

Due Date	Amount
Within 30 day of execution of Order	\$4,425 or balance
October 1, 2022	\$4,000 or balance
January 1, 2023	\$4,000 or balance
April 1, 2023	\$4,000

2. If the Department fails to receive a civil charge payment pursuant to the schedule described above, the payment shall be deemed late. If any payment is late by 30 days or more, the entire remaining balance of the civil charge shall become immediately due and owing under this Order, and the Department may demand in

writing full payment by Vico. Within 15 days of receipt of such letter, Vico shall pay the remaining balance of the civil charge. Any acceptance by the Department of a late payment or of any payment of less than the remaining balance shall not act as a waiver of the acceleration of the remaining balance under this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Vico shall include its Federal Employer Identification Number (FEIN) (____-_____) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Vico shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Vico for good cause shown by Vico, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV Nos. W2019-06-T-0001 dated June 13, 2019; W2020-04-T-0005 dated April 3, 2020; W2020-08-T-0001 dated August 27, 2020; March 23, 2021; W2021-11-T-0002 dated November 23, 2021; W2020-08-T-0002 dated August 27, 2020; W2021-11-T-0003 dated November 23, 2021; and, W2022-04-T-0001 dated April 5, 2022. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Vico admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Vico consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Vico declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial

review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by Vico to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Vico shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Vico shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Vico shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Vico. Nevertheless, Vico agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Vico has completed all of the requirements of the Order;
- b. Vico petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Vico.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Vico from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable

12. Any plans, reports, schedules or specifications attached hereto or submitted by Vico and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Vico certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Vico to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Vico.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Vico voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20____.

Craig R. Nicol, Regional Director
Department of Environmental Quality

Vico Construction Corporation, voluntarily agrees to the issuance of this Order.

Date: 4-5-22 By: [Signature], VP
(Person) (Title)
Vico Construction Corporation

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 7 day of
APRIL, 2022, by PAT E. VIOLA who is
Vice President of Vico Construction Corporation, on behalf of the
corporation.

[Signature]
Notary Public
304545
Registration No.

My commission expires: 8-31-2025

Notary seal:



APPENDIX A

SCHEDULE OF COMPLIANCE

1. By July 1, 2022, Vico shall submit to DEQ a corrective action plan (“CAP”), for both the Grind Yard and Southern Pines, and schedule for review and approval. The CAP shall include:
 - a. A plan to achieve and maintain consistent compliance with Permit requirements;
 - b. A solution to the improper DMR reporting;
2. Upon approval by DEQ, the CAP and schedule become enforceable under this Order.
3. Vico shall complete corrective action in accordance with the CAP as expeditiously as possible, but no later than October 1, 2022.
4. Unless otherwise specified in this Order, Vico shall submit all requirements of Appendix A of this Order to:

Enforcement
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, Virginia 23462